

MASSACHUSETTS RULES OF CIVIL PROCEDURE

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

Reporter's Notes--2017

Since the 1980s, the Massachusetts Rules of Civil Procedure have provided for two types of audio-visual depositions. The first is an audio-visual deposition by leave of court or by stipulation of the parties under Rule 30A(a)-(k). The second is an “audio-visual expert witness deposition for trial” under Rule 30A(m). Rule 30A(m) allows a party to depose a treating physician or expert witness whom the party intends to call at trial as his or her own witness without the need to obtain leave of court or a stipulation and to use that deposition at trial in lieu of live testimony. Rule 30A(m) does not apply to another party’s treating physician or expert.

The 2017 amendments to Rule 30 and Rule 30A deal with the first type of audio-visual deposition and make no change to the Rule 30A(m) deposition. The changes allow audio-visual depositions as a matter of right, making Massachusetts practice consistent with the approach in other jurisdictions and consistent with the Federal Rules of Civil Procedure. The amendments recognize the advantages of audio-visual depositions in addition to written transcripts of depositions.

Rule 30(b). Rule 30(b)(4) allows a party as a matter of right to record a deposition by stenographic and audio-visual means. Where a deposition is recorded by stenographic and audio-visual means, the parties must comply with both Rule 30 and Rule 30A. The party who chooses to have testimony recorded by stenographic and audio-visual means is required to bear the cost of the audio-visual recording. A party who requests a copy of the audio-visual recording is required to bear the cost of a copy of the recording.

Rule 30(e). The recording of an audio-visual deposition must be submitted to the witness for examination together with the transcript of the deposition, unless waived by the witness and the parties. This provides the deponent with the opportunity to view the video before signing the written transcript of the deposition. The rule does not set forth details regarding the manner of submission or location for the viewing of an audio-visual deposition, leaving these matters to be worked out by the parties.